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Detroit Office
November 14, 1990

Ms. Karla L. Johnson
Remedial Project Manager
United States Environmental Protection Agency
Region V
230 South Dearborn Street, 5HS-11
Chicago, Illinois 60604

FEDERAL EXPRESS

Maria Gonzalez, Esq.
United States Environmental Protection Agency
230 South Dearborn Street
Chicago, Illinois 60604

FEDERAL EXPRESS

Re: Hi-Mill Manufacturing Company
1704 E. Highland
Highland, Michigan
Risk Assessment Performance

Dear Ms. Johnson and Ms. Gonzalez:

The purpose of this letter is to establish, for the record, Hi-Mill Manufacturing Company's ("Hi-Mill") intent to continue with its preparation and submittal of the Risk Assessment for the referenced site.

Hi-Mill entered into an Administrative Order By Consent ("AOC") with the EPA effective October 5, 1988. That AOC required that Hi-Mill, as the sole PRP, conduct the RI/FS.

Relying on OSWER Directive No. 9835.15 dated August 25, 1990, (copy attached hereto) Hi-Mill is continuing to develop and will submit the Risk Assessment in accordance with the recently established RI/FS schedule. In the Directive, the Assistant Administrator makes it clear that PRPs governed by an existing Order will be given an opportunity to complete the Risk Assessment. (OSWER, p. 3).

In that Directive, Assistant Administrator Clay has clearly stated a preference for permitting PRPs to complete the risk assessment in existing cases:

> "Within the terms of existing orders . . . EPA will give a PRP an opportunity to complete the risk assessment correctly." (emphasis added)

He also makes it clear that, in such cases, EPA will only undertake its own risk assessment if the PRP fails to do an adequate job " . . . even after EPA has provided comments or after the parties have exhausted other procedural requirements . . ." In this case, EPA has made comments and set forth procedural requirements, i.e., mandating a change of consultant.

Hi-Mill promptly complied with that requirement by retaining Geraghty & Miller, Inc., as consultant. Hi-Mill and Geraghty & Miller have indicated their willingness to properly complete the risk assessment. At the meeting of October 12, 1990, between representatives of EPA, Hi-Mill and Geragthy & Miller, Agency personnel stated that there was no question that Geraghty & Miller was capable of completing an acceptable risk assessment. Under the circumstances, this case clearly qualifies as one where the PRP should be given the opportunity to complete the risk assessment, pursuant to the Directive.

Should the EPA insist upon undertaking the Risk Assessment, Hi-Mill would view that as contrary to the policy established in the Directive. In that case, Hi-Mill would request a meeting with the appropriate representatives of EPA Headquarters as outlined on page 3 of the Directive.

Should you have any questions, please feel free to contact me at (313) 225-7042 or my colleague, Mr. Jack Shumate at (313) 225-7075.

Very truly yours,

BUTZEL LONG GUST KLEIN & VAN ZILE

Robert Charles Davis

214/bp
enc.
cc: Robert and Richard Beard
Kevin Wolka

sent to CLM BES

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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REGION VII

Ayy'd CERCLA Branch 4-4-90

AUG 28 1990

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

OSWER Directive No.
9835.15

MEMORANDUM

SUBJECT: Performance of Risk Assessments in Remedial Investigation/Feasibility Studies (RI/FSs) Conducted by Potentially Responsible Parties (PRPs)

FROM: Don R. Clay
Assistant Administrator

TO: Regional Administrators, Regions I-X

The purpose of this memorandum is to provide initial guidance on implementing my recent decision that in the future EPA will develop all risk assessments for sites remediated under CERCLA. This directive focuses on the applicability of the decision to new and existing orders or decrees for RI/FSs conducted by PRPs. A companion memorandum from the Office of Enforcement addresses the performance of risk assessments at Federal facilities.

In essence, EPA or a State (whose oversight of the PRP is Federally funded) will develop the risk assessment for all new orders or decrees. For existing orders or decrees that specify that the PRP prepares the risk assessment, the PRP will be given an opportunity under the terms of the order or decree to complete an acceptable risk assessment under stringent oversight and without undue delay. The term "risk assessment" in this directive is meant to include environmental assessments as well as assessments of risks to human health.

Background

As you know, OSWER recently completed a study that, among other things, compared remedies selected where the RI/FS was conducted by PRPs with those where the RI/FS was conducted by EPA or a State under cooperative agreement with EPA ("A Comparative Analysis of Remedies Selected in the Superfund Program During FY 87, FY 88, and FY 89," June 20, 1990, OSWER Directive 9835.13). The study revealed that PRP risk assessments tended to need extensive modifications by the Regions. For this reason I

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decided that in the future EPA alone (or a State if its oversight of the PRP is Federally funded) would develop the risk assessment. I announced this decision in a hearing before the Senate Subcommittee on Superfund, Ocean and Water Protection on June 21, 1990.

I realize that there are many orders and decrees already in existance for PRP RI/FSs that stipulate that the PRP will develop the risk assessment. Negotiations are also underway for PRPs to conduct additional RI/FSs. Therefore, this memorandum explains how my decision applies to new and existing orders or decrees for RI/FSs to be conducted by PRPs under CERCLA authority.

Policy for New Orders or Decrees for PRP RI/FSs

Effective immediately, EPA will not enter into any new orders or decrees for PRP RI/FSs in which risk assessments are to be conducted by PRPs. That is, new orders or decrees for PRP RI/FSs must state that EPA (or a State whose oversight is Federally funded) does the risk assessment, and must not include risk assessment products or deliverables to be developed by the PRP. Such risk assessment products, including but not limited to identification of chemicals of concern, current and future exposure scenarios, and toxicity information, will be prepared by EPA. The FS and remedy selection shall be based on EPA's risk assessment. New orders or decrees should explicitly state that PRPs will use EPA's risk assessment as the basis of the FS.

This new policy does not change any responsibilities PRPs may have regarding the collection of site data relevant to the development of the baseline risk assessment. It is not expected, nor is it generally necessary, that EPA should independently collect data from the field in order to be able to develop the risk assessment. Rather, these data should be provided by the PRP's normal activities in conducting the RI under EPA oversight (of course, as part of oversight Regions should continue to conduct audits, engage in split sampling, etc. to assure the accuracy of PRP-generated data).

New orders or decrees should stipulate that the PRPs will pay the costs for EPA (or a State) to develop the risk assessment.

Policy for Existing Orders or Decrees for PRP RI/FSs

For existing orders or decrees where the PRP is to prepare the risk assessment, procedures are to be followed to allow PRPs to complete high quality risk assessments, or alternatively, to allow EPA to complete risk assessments that PRPs do inadequately.

In implementing this policy guidance, Regions should examine the specific terms of the order or decree in any given case. If there appear to be problems in implementing the guidance under the terms of a particular order or decree, Headquarters should be consulted.

Within the terms of existing orders or decrees, EPA will give a PRP an opportunity to complete the risk assessment correctly. I encourage and expect PRPs to consult with EPA early and throughout the risk assessment process so they can ensure that their work is in accordance with the NCP and Agency guidance and is of high quality. If the risk assessment delivered by the PRP is unacceptable, even after EPA has provided comments or after the parties have exhausted other procedural requirements (such as dispute resolution) as may be provided for in the order or decree, EPA will undertake its own risk assessment.

Depending on the terms of the order or decree, the Region may provide comments on drafts of an intermediate deliverable in those cases where orders require major intermediate deliverables for the risk assessment; if, after providing comments as required and pursuing other recourses as may be required under the order or decree, the intermediate deliverable from the PRP remains unacceptable, the Region may decide at that point to prepare its own risk assessment. These procedures will allow EPA to avoid numerous reviews throughout the development of the risk assessment, which can be so costly in time and resources.

If the Region determines that the final PRP risk assessment is fully acceptable, the Region should document this finding in writing and place the written certification in the Administrative Record file. Such an explicit certification by EPA of a PRP risk assessment should help assure the public that EPA is providing the necessary oversight.

If, on the other hand, a risk assessment is undertaken by EPA because the PRP's is unacceptable, EPA may use any parts of the PRP's work deemed to be of high quality. That is, it is not necessary to duplicate work that the PRP has already done well.

I feel that this approach will eliminate unnecessary duplication of resources while ensuring that all risk assessments on which future remedy selections are based will be of the highest quality.

Further Implementation Steps

As you are probably aware, the PRP community has expressed concern about my decision and its effect on their conduct of the rest of the RI/FS. I recognize that PRPs have some legitimate issues regarding coordination, scheduling, and accountability. I have therefore agreed to discuss these particular problems with PRP groups and other interested parties with the intent of implementing my decision in the most efficient and least disruptive way. I will certainly include the Regions as we enter into these discussions later in the year.

If you have any questions about this policy, please contact Arthur Weissman, Chief, Guidance and Evaluation Branch, Office of Waste Programs Enforcement, at FTS 475-6770.

cc: Director, Waste Management Division,
Regions I, IV, V, VII
Director, Emergency & Remedial Response Division,
Region II
Director, Hazardous Waste Management Division,
Regions III, VI, VIII, & IX
Director, Hazardous Waste Division,
Region X
Regional Counsel, Regions I-X
Regional CERCLA Branch Chiefs, Regions I-X

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

REPLY TO ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert Beard
Richard Beard
Hi-Mill Manufacturing Company
1704 E. Highland
Highland, Michigan 48031

Re: Hi-Mill Manufacturing Co. Site
Remedial Investigation

Dear Sirs:

The purpose of this letter is to confirm the United States Environmental Protection Agency's (U.S. EPA) position regarding matters discussed at the meeting held on October 12, 1990, between U.S. EPA, the attorney for Hi-Mill Manufacturing Co. (Hi-Mill), and its new consultant, Geraghty and Miller.

As you know, U.S. EPA disapproved Hi-Mill's Preliminary Remedial Investigation (RI) Report and Risk Assessment on September 17, 1990. Under the Consent Order issued in this matter (V-W-88-C-127), Hi-Mill had 45 days from receipt of U.S. EPA's comments or such longer period as the U.S. EPA Project Coordinator established to revise its RI report and Risk Assessment. Two options were presented to Hi-Mill at the October 12, 1990, meeting. U.S. EPA was willing to allow Hi-Mill an extended schedule for submission of a revised RI report; but would not allow a further extension for submission of the Risk Assessment. Hi-Mill was advised that U.S. EPA intended to take over the Risk Assessment if a satisfactory revision was not submitted within 45 days of the September 17, 1990, comments. Alternatively, Respondent could submit the Risk Assessment and RI Report within the 45-day time frame.

Respondents objected that it would not be possible to comply with the 45-day time frame. If Respondents could not comply with this deadline, it is because of the deficiencies of the work conducted by Respondents. "The failure of any contractor, consultant firm or other person or entity acting under or for Respondent with

respect to matters included in ... [the] Consent Order to fully comply with the terms of ... [the] Consent Order will not relieve the Respondent of its responsibility to carry out all actions required of the Respondent by the terms and conditions of ... [the] Consent Order, will not provide a defense to any assertion of a right by U.S. EPA under [the] Consent Order or otherwise, and will not be considered cause for delay." Consent Order Section III.C.

Hi-Mill did not submit the revised Risk Assessment as required by Paragraph IX.C. of the Consent Order. U.S. EPA hereby notifies Hi-Mill of its second disapproval of Respondent's Risk Assessment based upon the same reasons stated in EPA's comments on the Preliminary Risk Assessment dated June 21, 1990. Pursuant to paragraph IX.D. of the Consent Order, Hi-Mill has 10 days from the date of receipt of this notice to submit an acceptable Risk Assessment. If U.S. EPA does not receive an acceptable Risk Assessment within 10 days of Hi-Mill's receipt of this letter, U.S. EPA shall conduct a Risk Assessment of the Site.

Contrary to the suggestion in the November 14, 1990, letter submitted by your counsel, U.S. EPA has provided such opportunity to complete the Risk Assessment as is accorded by the Consent Order. The November 14, 1990, letter also implied that Respondent could submit a risk assessment pursuant to a recently established schedule. As indicated in our meeting on October 12, 1990, and as your attorney acknowledged on November 15, 1990, U.S. EPA did not extend the deadline for submission of the Risk Assessment.

U.S. EPA's position with regard to the Risk Assessment was again discussed with counsel and representatives of Hi-Mill at a meeting held on November 19, 1990. At this meeting, Hi-Mill argued that by granting an extension for other RI activities, U.S. EPA made it difficult to submit a Risk Assessment within the 45 day period. Respondent was given the option of submitting both the RI report and risk assessment early to comply with this deadline. As indicated above, Respondent's inability to do so is caused by the extent of the deficiencies of its earlier work product. These deficiencies were of such a degree and nature that U.S. EPA considered taking over the complete RI/FS project.

At the November 19, 1990, meeting a member of Hi-Mill's new consultant firm stated that it was his understanding that U.S. EPA would accept Hi-Mill's risk assessment and put U.S. EPA's name on it. This is an incorrect understanding. U.S. EPA will prepare the Risk Assessment. However, U.S. EPA may consider utilizing any information you choose to provide.

U.S. EPA reserves the right to enforce the Consent Order including, but not limited to, rights identified in Sections XXIII and XVIII of the Consent Order.

If you have any technical questions, please do not hesitate to call me at (312) 886-5993. Legal questions should be referred to Maria Gonzales, Assistant Regional Counsel, at (312) 886-6630.

Sincerely yours,

Karla L. Johnson
Remedial Project Manager

cc: J. Shumate Butzel & Long
R. Davis Butzel & Long
D. Larsen MDNR
K. Wolka Geraghty & Miller
G. Vanderlaan Geraghty & Miller

bcc: S. Louis Nathan
M. Gonzalez